

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEREK SMITH,

Petitioner,

v.

COUNTY OF RIVERSIDE,

Respondent.

Case No. 2:24-cv-00688-JDP (HC)

ORDER

FINDING THAT THE PETITION DOES
NOT STATE A COGNIZABLE CLAIM
AND GRANTING LEAVE TO AMEND
AND GRANTING PETITIONER'S
APPLICATION TO PROCEED *IN FORMA*
PAUPERIS

ECF Nos. 1 & 2

Petitioner, a state prisoner, brings this action under section 2254. ECF No. 1. The petition is deficient for two reasons. First, it does not appear that the claims have been exhausted in state court. Second, the claims are pled too vaguely to give respondent adequate notice. I will give petitioner an opportunity to amend and remedy these deficiencies.

The petition is before me for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine the habeas petition and order a response to the petition unless it “plainly appears” that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

Petitioner indicates that his conviction was handed down in November 2023 and that,

1 currently, he has an appeal pending with the state court of appeals and that he has not sought any
2 relief from the California Supreme Court. Thus, his claims appear unexhausted. *See Gatlin v.*
3 *Madding*, 189 F.3d 882, 888 (9th Cir. 1999) (“To exhaust a habeas claim properly, a petitioner
4 must present his claim to the state supreme court even if that court's review is discretionary.”).
5 Additionally, petitioner has not offered the specifics of his claims. He claims his right to a “due
6 diligent trial” was violated, but he does not say how or even what this means. ECF No. 1 at 4.
7 He also claims that the evidence presented to the jury failed to meet “substantive standards” but,
8 again, does offer sufficient explanation to give the reader notice. *Id.*

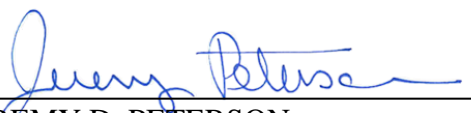
9 Petitioner may file an amended petition that clarifies the substance of his claims and
10 indicates whether he has exhausted any of his claims with the California Supreme Court. If he
11 fails to do so, I will recommend this action be dismissed.

12 Accordingly, it is hereby ORDERED that:

- 13 1. The Clerk of Court shall send petitioner a habeas form.
- 14 2. Petitioner must file an amended petition within thirty days of this order’s entry. If he
15 fails to do so, I will recommend this action be dismissed.
- 16 3. Petitioner’s application to proceed *in forma pauperis*, ECF No. 2, is GRANTED.

17 IT IS SO ORDERED.
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19 Dated: October 3, 2024

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21 JEREMY D. PETERSON
22 UNITED STATES MAGISTRATE JUDGE
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